



Timothy C. Parlatore, Esq.
Founder & Managing Partner

October 1, 2019

Admiral Michael M. Gilday
Chief of Naval Operations
2000 Navy Pentagon
Washington, DC 20350-2000

Subj: Request for Clemency in the Case of United States v. Special Operations Chief Edward R. Gallagher, U.S. Navy

Ref: (a) Article 38(c), UCMJ, 10 U.S.C. § 838(c) (2018)
(b) R.C.M. 1105(b) (MCM, 2016 ed.)
(c) Article 60, UCMJ, 10 U.S.C. § 860 (2014)
(d) R.C.M. 1107 (MCM, 2016 ed.)
(e) Authenticated Record of Trial, dated 19 Sept 2019

Encl: (1) "Retirement Calculation for Edward R. Gallagher" by Dr. Laura J. Taylor

Admiral Gilday:

We represent Special Operations Petty Officer First Class (SO1)¹ Edward R. Gallagher, United States Navy. Pursuant to references (a) through (d), we respectfully request that you exercise the unique authority vested in you by Congress to grant clemency, and permit our client to retire from the U.S. Navy after 20-years of service at the rank of Chief Petty Officer (E-7).

Chief Gallagher stands before you convicted at a General Court-Martial (GCM) of a single count of "wrongfully posing for unofficial pictures with a human casualty," in violation of Article 134 of the Uniform Code of Military Justice (UCMJ).² This specification alone would ordinarily never be prosecuted by a GCM, nor would it be adjudged the punishment you are now asked to review. Virtually all past cases of similar misconduct have been handled administratively. The only reason we are at this stage is because this specification—for which Chief Gallagher offered to accept responsibility *before* the trial commenced—was attached to several more serious allegations for which he was found, and is in fact, not guilty.

This case began with false allegations, matriculated into a corrupt investigation plagued by outrageous Government conduct and utter disrespect for the U.S. Constitution, and concluded with

¹ Edward Gallagher was reduced in rank from Chief Petty Officer to First Class Petty Officer automatically 14 days after his conviction. As much of the events described herein occurred prior to this reduction, we will refer to our client as Chief, for much of the remainder of this letter, the rank he held at the time.

² Specification 5 of Charge III

a dearth of evidence against him at trial. From beginning to end, this case shocked the conscience of American citizens and fueled national outrage at every level. Even after his acquittal on seven out of eight specifications, Chief Gallagher faces a draconian punishment that does not fit the conduct; it will inflict unnecessary and irreparable harm on his wife, children, and the equity of the military justice system.

Before this prosecution commenced, Chief Gallagher had been selected for promotion to Senior Chief, nominated for a Silver Star, and assigned to a coveted instructor position. As discussed below, all of this and more was taken away, as Chief Gallagher and his family suffered immensely throughout this process. They will always be haunted by the memories of this experience regardless of the decision you make on the final disposition of this case. We submit that having a federal felony level conviction as the result of a General Court-Martial is more than sufficient in this case, and respectfully request that you exercise appropriate discretion to allow him to retire as a Chief Petty Officer.

Standards and Authority

The maximum punishment for the specification of which he was convicted is reduction to the grade of E-1, forfeiture of two-thirds pay per month for four months, and confinement for four months. The members adjudged Chief Gallagher the following sentence: to be reduced to the pay grade of E-6; to forfeit \$2,697 pay per month for four months; and, to be confined for four months which he had already served in excess of double that time in pre-trial confinement at Naval Consolidated Brig Miramar. While the members only reduced Chief Gallagher one rank to E-6, Chief Gallagher is at risk for being automatically reduced to E-1³ as a result of the adjudged confinement time, if you approve the excessive sentence recommended by the members.

Article 60, UCMJ, and Rules for Courts-Martial (R.C.M.) 1107⁴ provide that the convening authority may, in the case of a “qualifying offense,” disapprove, commute, or suspend, in whole or in part, any portion of the adjudged sentence. A “qualifying offense” includes any offense for which the maximum sentence of confinement that may be adjudged does not exceed two years and for which the actual sentenced adjudged does not include a punitive discharge or confinement for more than six months. 10 U.S.C. § 860(c)(2)(B)-(D). Moreover, Article 60 provides the convening authority with the discretion to dismiss any charge or specification by setting aside the finding of guilty.

Pursuant to this legal authority, the defense respectfully requests that you consider the following appropriate dispositions:

1. Set aside the finding of guilty on the sole specification and administer nonjudicial punishment (NJP), for which Chief Gallagher will plead guilty uncontested;
2. If you decline to set aside the verdict in favor of NJP, disapprove his adjudged

³ JAGINST 5800.7F (JAGMAN) Para 0152 (c)

⁴ “In a case that was referred to trial before 1 January 2019, section 0152 is not applicable, and the post-trial procedures (to include the requirement for SJA recommendations) contained in R.C.M. 1107, MCM 2016 must be used.” JAGINST 5800.7F (JAGMAN) Para 0152 (c); the subject case was referred to General Court-Martial on 20 December 2018.

sentence, as further punishment beyond the conviction itself is unnecessary and excessive;

3. At a minimum, disapprove any portion of the adjudged sentence which directs or causes reduction in rate in any manner.

Pursuant to R.C.M. 1105(b)(2), the defense may “submit to the convening authority any matters that may reasonably tend to affect the convening authority’s decision whether to disapprove any findings of guilty or to approve the sentence,” including:

- a. Allegations of errors affecting the legality of the findings or sentence;
- b. Portions or summaries of the record and copies of documentary evidence offered or introduced at trial;
- c. Matters in mitigation that were not available for consideration at the court-martial, except as may be limited by R.C.M. 1107(b)(3)(B); and
- d. Clemency recommendations by any member, the military judge, or any other person. The defense may ask any person for such a recommendation.

ARGUMENT

1. The General Court Martial Conviction and Sentence Adjudged is Disproportionate to Similarly Situated Cases and Leads to the Unequal Application of Justice

Chief Gallagher’s conduct of posing in a photo with a dead terrorist is hardly a matter of first impression. Since technology has permitted them to carry cameras onto the battlefield, countless members of the armed forces have taken photos with deceased combatants. Notwithstanding the thousands of servicemembers who have engaged in this same conduct, it appears that Chief Gallagher is the only American servicemember in history to ever receive a General Court-Martial conviction, absent a finding of guilt for a more serious charge, of which this case is undoubtedly void. While the prevalence of this conduct does not make it moral or legal, the consistent disposition at significantly lower levels demonstrates that this General Court-Martial conviction is an unequal application of justice.

It is a well-established legal principle that where a significantly disparate sentence is imposed, it must be supported by “good and cogent reasons.” *United States v. Kelly*, 40 M.J. 558, 560 (N.M.C.M.R. 1994). Review for disparity is essential “to erase any unfairness or injustice in the proceedings. This authority is necessary to ensure both fairness and integrity in fact, as well as the appearance of fairness and integrity, without which the public, members of Congress, and service personnel will lose confidence in the military justice system.” *Id.* at 570. *See also, United States v. Lambert*, 2006 CCA LEXIS 300, *12-13, 2006 WL 4573015 (N.M.C.C.A. 2006). However, the power to review disparity in sentencing requires a threshold analysis of whether the cases to be compared are “closely related,” which requires that “cases must involve offenses that are similar in both nature and seriousness.” *Kelly* at 570.

Chief Gallagher’s offense can be compared to numerous cases which are “similar in both nature and seriousness” – namely, that a servicemember in a combat zone posed for photos with a dead or incapacitated enemy combatant after battle. Comparisons can be made on both the micro

and macro level. On the micro level, Chief Gallagher's case can be compared to the cases of at least 10 other servicemembers, all of whom took photos with the same terrorist as Chief Gallagher, none of whom have been charged, or even counseled for this conduct. In fact, they are all in the same photo with Chief Gallagher:



As was revealed during Chief Gallagher's trial, substantially all of these servicemembers also took individual photos with the terrorist. Investigators, however, never searched for the photos taken by other members of the platoon, and Chief Gallagher was the only participant in this photo, or any other photos, charged with a crime.

In fact, throughout the investigation and at trial, the lead NCIS investigator Special Agent Joseph Warpinski, repeatedly stated that, "nobody in the photograph had done anything wrong." *Transcript* p. 2262. In fact, as a prior Border Patrol Agent, SA Warpinski even attempted to build rapport with the witnesses by admitting that he had also posed for several similar photos on the border.

To analyze the disparate treatment on a macro level, the defense obtained information about the disposition of similar cases involving battlefield photos. The Navy does not maintain a central statistical analysis of such cases, so the defense attempted to compile information by reaching out to the veteran community for anecdotal input. Our request received the attention of the news media, leading to several national news articles and a significant response from veterans coming forward to tell their stories in the hopes that their experiences could help Chief Gallagher.

While our research was by no means comprehensive, given the limitations of a defense team's resources and access, the results were nonetheless striking. First, we did not get a single response where such a charge was ever disposed of at a GCM. As discussed below, we only found two cases that were brought to a criminal proceeding rather than administrative, both of which

ended in dismissals. Second, the outpouring of support from the veteran community was overwhelming. There was uniform anger at the manner in which a decorated warrior had been mistreated by the prosecutors, and a patriotic drive to help Chief Gallagher.

One of the largest communities to mobilize were the veterans of the war in Vietnam. We received over 30 responses in various forms (email, social media, phone calls, etc.) from these veterans expressing outrage and offering to send us photos of them with dead Viet Cong. After clarifying that we were not looking for the photos themselves, but rather information regarding how the service handled such offenses, responses indicated that no disciplinary actions were taken.

Similarly, we received several responses from veterans of the Global War on Terror. Many Army veterans from the earlier stages of the wars (2004-2007) were at a complete loss to understand the charge, as they were all *required* to take photos of every single enemy casualty by their chains of command. Several related stories of terrorists that had been blown apart, but they were still required to find and hold up any remaining body parts to take photos. Although the photos in this case were “unofficial,” none of these veterans could comprehend how it was prejudicial to good order and discipline or service discrediting to engage in the exact same conduct that they had been ordered to years earlier.

One retired SEAL Master Chief informed us that merely a decade ago many of the officers, including the then-Chief of Staff, had their own photos displayed in their offices in Coronado.

Exhaustively, we found only two cases where photo charges became part of court-martial proceedings: The Marines urinating on Taliban corpses; and, another case from SEAL Team 7 eerily similar to the case before you now.

The most well-known case of taking photos with enemy casualties was the 2012 case wherein several U.S. Marine Scout Snipers urinated on the corpse of a Taliban casualty. This case yielded international attention because the video was uploaded to YouTube, causing the highest levels of the Marine Corps to direct that the Marines in the video be punished. Additionally, pressure was applied by the Afghan government under President Hamid Karzai, threatening that the video was tremendously damaging to international relations.

All but two of the Marines in the video were referred to NJP for “posing for unofficial photographs with human casualties.” The two senior Marines present were charged criminally and referred to special court-martial (not general court-martial) but their charges were ultimately dismissed due to unlawful command influence.

While two cases were referred to court-martial, the Marine case is significantly distinguishable from Chief Gallagher’s. The video in the Marine case was publicly posted, causing a major international incident. The photos in Chief Gallagher’s case only became public because the JAG prosecutors made them public; there was no international incident. To the contrary, an influential Iraqi General flew to San Diego on his own dime to testify in Chief Gallagher’s defense. Moreover, the senior naval officers present in Chief Gallagher’s case, were not charged.

Lesser known was a case stemming from an incident involving SEAL Team 7 in Iraq in November 2003. A prisoner was taken by members of a SEAL platoon during a raid, then turned over to the CIA at Abu Graib for interrogation. Four hours after custody transfer of the prisoner, the prisoner died. Almost a year later, as a result of the fabrications by a disgruntled enlisted member of the platoon, members of SEAL Team 7 were investigated and charged with a litany of homicide-related offenses as well as posing for unofficial photographs with the detainee. Some of the photos were innocuous, but at least one depicted members of the platoon holding a gun to the detainee's head in a mock-execution pose. Both the OIC⁵, and AOIC LT Justin Legg, USN, were charged criminally and taken to Article 32 hearings, while several enlisted members were given NJP for being in photos with the prisoner.

LT Legg contested the charges at the Article 32 and prevailed in having the homicide charges dismissed.⁶ The hearing officer rejected much of the Government's theory as unsupported by the evidence and recommended that the case be disposed of at NJP. Ultimately, LT Legg was found guilty at NJP for dereliction of duty and wrongfully posing for unofficial photos with detainees. He received a Punitive Letter of Reprimand from then-WARCOM Commander, RADM Joseph McGuire, USN.

The OIC chose a different strategy and did not contest the Article 32. Instead, he waited until the court-martial to raise his defenses, at which time he was acquitted of all charges.

Though these two officers and their platoon were initially investigated and charged under the theory that they were participants in the death of the detainee, it later became clear that the death occurred after they turned the detainee over to the CIA. LT Legg was in multiple photographs with the detainee, including one where a gun was held to his head and another where the SEALs put a Halloween mask on the detainee.

Of note, LT Legg's Article 32 report summarizes his troop commander's testimony as follows:

He stated that wrt to [sic] photos he put out word that there would be "no photos of detainees except in an official capacity." Witness stated that if found out about someone taking unofficial detainee photos, he would have put a stop to it without much more than written counseling likely.

Ironical and shocking—the troop commander at the time was LCDR Matthew Rosenbloom, USN—the same man who, over a decade later as Commodore, Naval Special Warfare Group ONE, recommended Chief Gallagher's case be tried at a General Court-Martial, ordered Chief Gallagher into pretrial confinement, and, as discussed below, continued to impose retaliatory restrictions upon him after his acquittal.

⁵ Because the OIC was acquitted of all charges and is still serving on active duty, we are not including his name in this submission, but can provide it, at your request.

⁶ This was in 2005, before reforms have watered down the effectiveness of the Article 32 hearing in weeding out baseless cases. We submit that had Chief Gallagher been given the same rights under the old Article 32 scheme, this case likely would have been resolved at a much lower level long ago.

2. The General Court Martial Conviction and Sentence Adjudged Violates Navy Policy that a Junior Cannot Receive More Severe Punishment than a Senior for Offenses Arising out of the Same Incident.

The Navy has a long-standing custom that a junior cannot receive more severe punishment than a senior for offenses arising out of the same incident. This well-established custom is important for maintaining the responsibility of command.

The most well-known case involving this principle were the courts-martial arising out of the fatal collision between USS Belknap (CG 26) and USS John F. Kennedy (CV 67) in the Mediterranean Sea in November 1975. The cruiser was crossing the bow of the conventionally powered carrier when the marginally qualified Officer of the Deck (OOD) turned to starboard saving Belknap from crossing Kennedy's bow and being cut in two but collided with the angled deck overhang on Kennedy's portside. Eight sailors were killed, and Belknap required repairs taking half a decade. The Belknap's Commanding Officer was acquitted at trial; he was not on his bridge and successfully argued that he was not guilty because he did the best he could to qualify his bridge watch officers. The OOD was convicted but received no punishment in line with the wise and long-standing Navy custom that a junior cannot receive more severe punishment than a senior of offenses arising out of the same incident.

Similarly, after the OIC was acquitted at court-martial, LT Legg's NJP conviction for posing for a photo with a detainee was vacated. This was done on the specific recommendation of VADM Joseph McGuire, USN, who had initially imposed NJP on LT Legg and who is currently serving as the acting Director of National Intelligence.

Here, there is not a single photo of Chief Gallagher posing with the dead terrorist that does not also have LT Thomas MacNeil, USN, in the photo. Even the individual photos of Chief Gallagher have LT MacNeil standing right behind him:



Although LT MacNeil was the AOIC of the platoon, he can hardly be described as a green, inexperienced officer. A 2011 Naval Academy graduate, he was commissioned as a Surface Warfare Officer and did a complete division officer tour on USS Ramage (DDG-61) before laterally transferring to the SEALs; he was on his second deployment since earning his trident.

LT MacNeil has received no punishment whatsoever for his conduct, either for posing with the terrorist, or for regularly consuming alcohol with the junior enlisted SEALs in Iraq. During his cross-examination at Chief Gallagher's trial, LT MacNeil admitted that he had several photos of himself with casualties and no intention of getting rid of them.

LT MacNeil has never received any discipline for his participation and oversight of the photos. It contradicts centuries of honored naval tradition and custom to permit Chief Gallagher to receive more severe punishment than a senior for offenses arising out of the same incident.

3. The Adjudged Sentence and General Court Martial Conviction were Only Imposed Because it was Coupled with Charges for which He is Not Guilty in a Case Riddled with Investigator and Prosecutorial Misconduct

It is readily apparent that the only reason the photograph specification was tried at a GCM was because it was coupled with several more serious charges which the jury rejected, finding Chief Gallagher not guilty. Moreover, had the acquitted charges been dropped earlier as requested by the defense, the special court-martial convening authority would have undoubtedly resolved this matter on terms substantially identical to those we now propose, steering clear of a court-martial.

Thus, Chief Gallagher's GCM conviction for posing for a photo with an enemy casualty is disproportionate to similar cases because he was wrongfully accused. Every legal safeguard that would have ordinarily prevented these specious charges from proceeding to GCM were bypassed:

1. The assigned NCIS agent admitted under oath during cross-examination that he violated numerous procedures in the NCIS manual throughout his investigation. *Transcript* p. 2306-2312.
2. The assigned NCIS agent never visited the crime scene. The agents who did visit failed to take basic measurements, photographs, or overlays of the fields of fire which would have demonstrated the implausibility of their witnesses' claims. When the defense wanted to send investigators to obtain this evidence, NCIS deemed the area "too kinetic" and further investigation was prevented.
3. At the Article 32, the Government did not call a single eyewitness, instead allowing that same NCIS agent to testify as to what everyone else would say. In some instances, he wholly fabricated their intended testimony, as he claimed that one witness, SO1 Joseph Arrington, USN, witnessed something that his videotaped interview shows he explicitly denied.
4. Although cause of death was known to be a difficult issue to prove in this case, prosecutors and investigators never consulted with a forensic pathologist about this until months after Chief Gallagher had been charged. They ultimately put an expert on

the stand who testified that he could not reach an opinion as to the cause of death.⁷
Transcript p. 2065

5. Prosecutors and investigators failed to properly investigate their case, failing to fully debrief several witnesses and failing to even speak to several others. At least two servicemembers in the group photograph with the dead terrorist above were never even interviewed.
6. The government illegally leaked documents to the media in an attempt to improperly taint the jury pool and prejudice the public against Chief Gallagher, in direct violation of the Judge's protective order.
7. The government illegally and dishonestly leaked to the media that they had found blood on Chief Gallagher's knife matching that of the dead terrorist. In reality, no blood was found, only touch DNA from an individual of possible Middle Eastern descent. This evidence, which was precluded by the judge, is consistent with the knife being touched by any one of the Iraqis that Chief Gallagher ever interacted with in country, or even his own troop Senior Chief, Brian Alazzawi.
8. As their case began to crumble, the lead prosecutor and NCIS resorted to the extreme measure of targeting defense counsel through an illegal email tracker and obliterated the line between law enforcement and intelligence assets promulgated under EO 12333 by using counter-intelligence assets to compile dossiers of potentially compromising material on defense counsel and a journalist who refused to blindly parrot their narrative. The Court ruled that this conduct violated Chief Gallagher's 4th, 5th and 6th Amendment rights.
9. The lead prosecutor attempted to suppress the contents of an exculpatory witness proffer. Not only did he violate his obligations to turn the material over to the defense, he also hid the materials from the junior prosecutors assigned to assist him.

The reason Chief Gallagher's case progressed to a General Court-Martial is because of this government misconduct, not because of any indicia of guilt. When presenting Navy Achievement Medals to the prosecutors (which were later rescinded by the Commander-in-Chief), Captain Gary Sharp, JAGC, USN, Chief of Staff, Region Legal Services Offices, stated that "we were right to prosecute." This is incorrect. The more accurate statement would have been "we were right to investigate," and after conducting a proper investigation, relied on professional judgment, rather than career ambition, to decide whether a prosecution is warranted and make appropriate recommendations to the original convening authority.

A fair, impartial, and skilled investigation would have quickly revealed that charges never should have been referred. While all of the normal safeguards were bypassed, ultimately the jury acted as the final gatekeeper preventing a wrongful conviction. However, that does not justify a specification normally disposed of administratively turning into a felony-level GCM conviction and a sentence which carries significant and permanent financial repercussions for Chief Gallagher and his family.

⁷ This aspect of the case has raised many eyebrows in the larger legal community, as seasoned federal and state prosecutors have expressed incredulity that JAG prosecutors could ethically ask a jury to find that Chief Gallagher caused the death beyond a reasonable doubt when their own expert was unable to reach an opinion. In just about any civilian courtroom in the country, prosecutors would have dismissed the murder charge for this reason.

4. The Sentence Adjudged is Excessive, Given the Punishment Chief Gallagher and his Family have Already Suffered and his Record of Exemplary Service to our Nation

Chief Gallagher has devoted his entire adult life to serving our country and putting himself in harms way to keep us safe. He has eight combat deployments and numerous medals. He has endured physical damage amounting to 18 separate documented incidents of brain injuries. His history of service as well as his medical history were presented at length at his sentencing hearing and, for the sake of economy, will not be repeated here, but rather are incorporated by reference. Given this history, we submit that the suffering inflicted on Chief Gallagher and his family as a result of this case far exceeds what is appropriate for a charge of posing for a photo with a dead terrorist.

It took almost a year after the incident for an investigation to commence. At the time, Chief Gallagher had received a coveted instructor position teaching urban combat, had been selected for promotion to Senior Chief, and was nominated for a Silver Star. All three of these things were taken from him before the investigation yielded any results.

On 20 June 2018, NCIS executed a search warrant on Chief Gallagher's home. Although they initially attempted to deny it, SA Brian Frank admitted under cross-examination that NCIS marched Chief Gallagher's children, who were wearing only underwear, out of the house at gunpoint, M4s pointed at them as they exited the house. Three months later, on September 11, 2018, Chief Gallagher was arrested while receiving treatment at a traumatic brain injury clinic. This necessary medical treatment was withheld from him as he spent almost seven months confined in the Naval Consolidated Brig in Miramar before moving to restriction, ultimately ordered released by the Commander-in-Chief. Having spent most of his adult life as a member of the brotherhood of the SEAL Teams, Chief Gallagher was physically ripped away and separated in the brig. After a hearing, the military judge found that the entirety of his confinement at Miramar constituted illegal pretrial confinement and another 34 days of restriction were conducted under conditions that violated the Court's direction and constituted restriction tantamount to confinement. With the extra credit awarded, Chief Gallagher served well over double the maximum allowable confinement for this offense.

Aside from the failures to properly investigate and prosecute this case, NCIS investigators and the prosecutors went out of their way to hurt Chief Gallagher and his family. From holding his kids at gunpoint in the street while in their underwear, to ripping him out of a TBI clinic on 9/11, to the persistent violation of the Constitutional rights that he had spent his life defending, there was a continuous pattern of acts designed to humiliate and destroy an American hero.

Naval Special Warfare Group ONE has made it their mission to isolate and punish Chief Gallagher, even after his acquittal, when he was banished to the logistical support unit and prohibited from stepping foot on Naval Amphibious Base Coronado where all the west coast-based SEAL Teams are located.

As outlined in the attached "Retirement Calculation for Edward R. Gallagher" by Dr. Laura J. Taylor, the financial implications for our client's pension are significant. An estimated value of

an E-6 pension is **\$192,641** less than if he retires as an E-7 (and over \$1.1 million if he retires as an E-1).

Given the tremendous hardship that Edward Gallagher and his family have endured, we submit that no further punishment is necessary. In summary, Chief Gallagher has already lost (in order of sequence, not precedence):

1. Promotion to E-8;
2. Silver Star nomination;
3. Instructor position at Special Operations Urban Combat School;
4. His children's' dignity and innocence as they were dragged out into the streets in their underwear at gunpoint by NCIS.
5. Superior treatment for his TBI at the Intrepid Center;
6. His freedom for a period of incarceration that is more than double the maximum punishment for his offense;
7. The humiliation and scarring of his children being forced to wear robes to visit him because of all the sex offenders in the same brig;
8. The financial hardship of his family supporting him through this ordeal;
9. The camaraderie of his fellow SEALs;
10. Time with his family;
11. The stress of a trial for a murder he did not commit and the risk of life in prison;
12. The last year of what would have otherwise been an enjoyable and impactful Navy career;
13. Future career prospects in contracting, given his infamy and recognizability.

With all that he has already lost, we respectfully submit that no further punishment is required for an offense that is uniformly handled administratively.

CONCLUSION

“The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.” MCM, Part I, para. 3. Approving the sentence as adjudged would undermine our warfighter’s confidence in the fairness, proportionality, and equity of that system.

For all the reasons stated herein, as well as in our sentencing submissions, testimony, and arguments, we respectfully request that you exercise your discretion to allow Edward Gallagher to retire at the paygrade of Chief Petty Officer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy C. Parlatore', written in a cursive style.

Timothy C. Parlatore, Esq.

Marc Mukasey, Esq.

Major Nelson Candelario, USMC

LT Gregory J. Gianoni, JAGC USN

Catherine Deist, Esq.

Kelly Wilson, Esq.

Laura J. Taylor, PhD

July 12, 2019

MAJ Nelson Candelario
Defense Service Office West
3395 Sturtevant Street, Suite 2
San Diego, CA 92136

RE: Retirement calculation for Edward R. Gallagher

Dear MAJ Candelario,

Pursuant to your request, I have performed an analysis of the retirement benefits of CPO Edward R. Gallagher. The analysis is based upon the following key data:

- (1) Date of birth: May 29, 1979
- (2) Present value date: July 12, 2019
- (3) Assumed date of normal retirement: August 1, 2019
- (4) Servicemember's remaining statistical life expectancy as of the present value date: 38.6 years to age 78.7¹
- (5) Pension system:
 - If retires as an E-7—High-three
 - If retires as an E-6 or E-1—Final Basic Pay²
- (6) Calculated beginning annual pension:
 - If retires as an E-7—\$27,250 (2019\$)
 - If retires as an E-6—\$24,280 (2019\$)
 - If retires as an E-1—\$10,085 (2019\$)
- (8) Assumed annual rate of increase in pension benefit during retirement: 2.6%³

¹ Calculated from Table 2 of the 2016 United States Life Tables, Centers for Disease Control, Division of Vital Statistics, National Vital Statistics Reports, Vol. 68, No. 4 (May 2019).

² Under the assumption that CPO Gallagher is reduced in rank to either an E-6 or E-1, it is my understanding that the pension system under which he would retire changes from High-three to Final Basic Pay. 10 U.S.C. § 1407(f) mandates that a servicemember who is retired in grade by reason of conduct occurring after October 30, 2000 and not subsequently promoted will be retired under the Final Basic Pay plan.

³ From Table V.B1 of the 2019 Annual Report of the Board of Trustees of the Federal Old-age and Survivors Insurance and Federal Disability Insurance Trust Funds, April 25, 2019.

The following shows the results of the analysis in nominal terms, which shows the actual inflated lifetime dollar amount for the pension benefit:

If retires as an E-7

	<u>Nominal Value</u>
Pension	\$1,767,495

If retires as an E-6

	<u>Nominal Value</u>
Pension	\$1,574,854

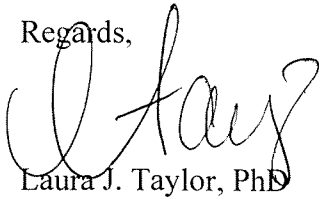
If retires as an E-1

	<u>Nominal Value</u>
Pension	\$654,135

In reviewing the results of the analysis, you should be aware that the pension benefit loss begins to accrue at the assumed date of retirement and ends at CPO Gallagher's statistical life expectancy.

If you have any further questions, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read 'Laura J. Taylor', is written over the typed name.

Laura J. Taylor, PhD